

FILED
JAMES BONINI
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04 APR 15 PM 2:35U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUSIN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**THE BOLER COMPANY**
500 Park Boulevard, Ste. 1010
Itasca, Illinois 60143-1285

Plaintiff

vs

TUTHILL CORPORATION d/b/a
Reyco Granning Suspensions
c/o CT Corporation System
1300 East 9th Street
Cleveland, Ohio 44114

Defendant

Civil Action No.

CZ 04-280
Judge

JUDGE MARBLEY

MAGISTRATE JUDGE KING

COMPLAINT

(Jury Demand Endorsed Hereon)

JURISDICTION AND VENUE

1. This action arises under the Patent Laws of the United States, United States Code, Title 35, Section 1 et. seq. and, in particular, 35 U.S.C. § 271.
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a).
3. Jurisdiction of the personal and venue is proper in this Court pursuant to agreement of the parties contained in the Settlement Agreement of June 10, 2003 (Attached Exhibit B).

PARTIES AND PATENTED DEVICE

4. The Boler Company is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is at 500 Park Boulevard, Itasca, Illinois 60143. A principal place for the manufacture and sale of track axles forming embodiments of the invention of the patent here in suit (U.S. Patent No. 6,073,947) is at Boler's Division, d/b/a Hendrickson Auxiliary Axle Systems, in Hebron, Ohio, which is within this Division of this District.

5. Tuthill Corporation (hereinafter "Tuthill") is a corporation which is organized and existing under the laws of the State of Delaware and is doing business, in part, under the name Reyco Granning. Tuthill's principal place of business is at 8500 South Madison, Burr Ridge, Illinois 60527.

6. The Boler Company, is the owner of all right, title and interest in and to United States Patent No. 6,073,947 issued September 22, 1998, entitled "SUBSTANTIALLY WELD FREE FRAME BRACKET ASSEMBLY" (hereinafter referred to as the "'947 patent"). A true copy of this patent is attached hereto as Exhibit A.

CLAIM FOR RELIEF

COUNT ONE
PATENT INFRINGEMENT

7. Defendant Tuthill has infringed and continues to infringe the '947 patent by making, using, selling and offering for sale products that come within the scope of at least one of the '947 patent including the suspension which Defendant Tuthill designates as its MaxiMiser™ suspension system.

8. The acts of infringement are irreparably harming and causing damage to Plaintiff Boler and will continue to do so unless and until restrained by this Court.

COUNT TWO
Breach of Contract

9. On or about June 10, 2003, the parties entered into a settlement agreement (Exhibit B, attached) to dispose of the infringement issues raised in Plaintiff's Complaint filed in this Court as Case No. 2:03-cv-0437.

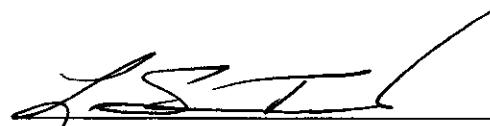
10. As part of this settlement, Defendant agreed to "cease using, selling, making or offering for sale a suspension system . . . having a frame . . . bracket such that the suspension would infringe a valid claim of the '947 patent."
(Paragraph 1, Exhibit B)

11. Defendant has redesigned the suspension system which does and continues to infringe one or more of the claims of the '947 patent.

PRAYER

WHEREFORE, Plaintiff demands Judgment as follows:

- a. This Court preliminarily and permanently enjoin Defendant and all those in active concert or participation with it from infringing the '947 patent, in accordance with 35 U.S.C. §283;
- b. Plaintiff be awarded Judgment against Defendant for damages, interest, and costs resulting from Defendant's infringement of the '947 patent, pursuant to 35 U.S.C. §284; and
- c. The Court award all such further or different relief as is available, at law or in equity, including permitting Plaintiff to amend this Complaint to seek other relief and/or to assert willful infringement and/or an exceptional case should and as discovery may uncover and disclose grounds therefore.



Lawrence S. Turner, Esquire
Trial Attorney
Ohio Reg. Number 0000736
Turner, May & Shepherd
185 High Street, N.E.
Warren, Ohio 44481-1219
(301) 399-8801
email: lturner@lawturner.com

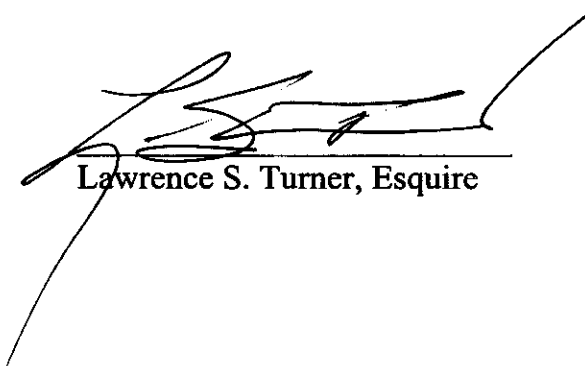
Of Counsel:

Geoffrey R. Myers, Esquire
Hall, Myers, VandeSande & Pequignot
10220 River Road, Ste. 200
Potomac, Maryland 20854
(301) 983-2500

Attorneys for Plaintiff
The Boler Company.

JURY DEMAND

Plaintiff demands trial by jury for all issues for which it is available.



Lawrence S. Turner, Esquire